

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Elizabeth Kneebone (Applicant)

AND Schizophrenia Fellowship
Waikato Incorporated (Respondent)

REPRESENTATIVES Boris Samujh, Advocate for Applicant
Oliver Collette-Moxon, Advocate for Respondent

MEMBER OF AUTHORITY Vicki Campbell

INVESTIGATION MEETING 14 August 2006
15 August 2006
5 September 2006

SUBMISSIONS RECEIVED 19 September 2006 from Applicant
28 September 2006 from Respondent

DATE OF DETERMINATION 13 February 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Elizabeth Kneebone was one of three field workers employed by Schizophrenia Fellowship Waikato Incorporated (“SFW”). In her statement of problem Ms Kneebone claims she has been subjected to work place bullying, that the employer breached its duty to provide a healthy and safe work environment, breached the employment contract by imposing a unilateral variation of one or more of her terms and conditions of employment, had breached the implied term of trust, confidence and good faith, had breached procedural fairness requirements and that all of these actions are unjustified and gives rise to a disadvantage grievance and a constructive dismissal.

[2] SFW is a non-profit organisation. Its objects are to assist people and families who suffer, or have family members who suffer, from mental illnesses. There were no formal management structures in place. SFW employs four employees who are managed by the SFW Committee and each of whom worked reasonably autonomously. The committee members are all volunteers.

[3] SWF denies Ms Kneebone's claims and says that there was a personality conflict between Ms Kneebone and a work colleague, Ms Maureen Mildon. SWF says despite its attempts to resolve the issues and to have the two employees working together harmoniously, Ms Kneebone went on a period of sick leave from which she resigned.

[4] The issues for determination are whether:

- the employment relationship ended as a result of a dismissal or resignation;
- if there was a resignation, did the circumstances give rise to a constructive dismissal?
- did Ms Kneebone suffer a disadvantage in her employment?
- did SWF breach its obligations relating to good faith pursuant to the Employment Relations Act 2000?

Work place bullying

[5] In making my findings of fact I am conscious that the allegations Ms Kneebone makes against SWF and Ms Mildon, in particular, are very serious. Accordingly, the evidence in support of it needs to be as convincing in its nature as the charges are grave (*Honda NZ Ltd v NZ (with exceptions) Shipwrights etc Union*, [1990] 3 NZILR 23 (CA) applied). The Authority therefore, has the unenviable task of determining the facts on the basis of what it believes more likely than not, occurred i.e. on the balance of probabilities.

[6] "Bullying" has not been defined in a legal sense because it is a difficult concept. I have had the benefit of reading the current case law and have undertaken extensive reading on the subject. Member King in *Evans v Gen-I Limited*, unreported, AA 333/05, 29 August 2005, stated:

Bullying may be seen as something that someone repeatedly does or says to gain power and dominance over another, including any action or implied action, such as threats, intended to cause fear and distress.

[7] The common theme arising from the literature I have read suggests a bully has a desire to exert power and control over others, usually demonstrates a complete lack of understanding for other people's feelings and uses intimidating behaviour.

[8] Ms Kneebone's allegations of bullying relate directly to her working relationship with Ms Mildon. There were six specific events which Ms Kneebone relied on to demonstrate that she was subjected to workplace bullying. These were:

- Public Trust incident;
- Purple pen incident;
- Exclusion from various discussions and committees;
- A requirement to attend a 2004 mediation as a result of her relationship with Ms Mildon;

- Barbara Laird incident;
- Written Warning.

The relationship between Ms Kneebone and Ms Mildon

[9] At the investigation meeting Ms Kneebone advised me that during her employment she was on medication for a depressive disorder which was well managed. Ms Kneebone told me that her symptoms of depression had existed before the conflict with Ms Mildon. She said she has been on anti-depressants for 6-7 years. The employer was not aware Ms Kneebone was on medication throughout her employment. During the process of investigating this matter Ms Kneebone also disclosed that she has a susceptibility to epilepsy seizures, something which was completely unknown to SFW or those that worked directly with Ms Kneebone until the investigation into her application in the Authority.

[10] Ms Kneebone was employed as a field worker by SFW on 11 December 2000. She was subject to a written individual employment agreement. In 2002 Ms Mildon commenced employment with SFW, also as a field worker. Following Ms Mildon's appointment, a third field worker, Ms Rena Reti was employed. The other employee, making four in total, was the SFW administrator, Mrs Diane Law who worked on a part time basis. Ms Kneebone and Ms Mildon have known each other for a long time, they had been to school together and Ms Kneebone was enthusiastic about Ms Mildon's appointment.

[11] Ms Kneebone says she experienced difficulties working with Ms Mildon soon after Ms Mildon commenced her employment in 2002 but she did not consider Ms Mildon's behaviour as bullying at that time, just difficult.

[12] By way of example Ms Kneebone told me that at a presentation in 2002, Ms Mildon had interrupted her mid sentence, and then took over her presentation. (There was a dispute as to when this incident occurred. I have had the benefit of reviewing Ms Mildon's work diaries. I am satisfied that it is more likely than not, that the incident referred to by Ms Kneebone occurred in 2004, not 2002. There were no entries in Ms Mildon's diaries for 2002 or 2003 relating to presentations, however, there were in the 2004 diaries. I am supported in my conclusion by Ms Kneebone's own evidence that she did not have a problem with Ms Mildon until 2004.)

[13] Ms Kneebone says that following that incident she voiced her concern to Ms Mildon in an assertive but courteous way so that they could sit down as two professionals and nut out a way around the problem. Ms Kneebone says she approached Ms Mildon immediately after the presentation and advised her that while she had enjoyed the presentation she felt really upset when she had been interrupted and Ms Mildon had finished the presentation. Ms Kneebone says she told Ms Mildon she felt it would be helpful if Ms Mildon had waited until she had finished her part and

then for her to do her presentation. Ms Kneebone said that Ms Mildon did not say anything, but looked stunned when she raised the issue with her.

[14] Ms Kneebone says Ms Mildon did not talk to her until they got back to the office whereupon Ms Mildon told her "*Liz I did not appreciate you telling me off*". Ms Kneebone told Ms Mildon that she was not telling her off, but rather that she was trying to tell Ms Mildon, in a courteous way, about how, what she did, had affected her.

[15] Ms Mildon told me she clearly recalls the incident. She says that Ms Kneebone started the presentation. She was speaking at the front of the class and that she wandered off the topic and spoke at length about her own family. She says she eventually got back on track but when Ms Kneebone was talking about SFW's relationships and partnerships with other agencies, she seemed to lose her train of thought and stopped mid sentence.

[16] Ms Mildon says Ms Kneebone looked around and she [Ms Mildon] thought Ms Kneebone was panicking as she had lost her train of thought. Ms Mildon agrees that she did step forward to continue the presentation on Ms Kneebone's behalf. She says she looked at Ms Kneebone a couple of times intending for her to pick up and continue, but all she got from Ms Kneebone was blank looks and so she finished that section of the presentation and then continued with her own presentation.

[17] Ms Mildon says that when Ms Kneebone challenged her, after the presentation, she was very aggressive and told her off loudly. They were in the stairway where the noise echoed. Ms Mildon agrees that once back in the office she did tell Ms Kneebone that she did not like being told off in a public place.

[18] The symptoms reported by Ms Mildon in relation to this incident are very similar to those identified by Dr Wright, a Neurologist. In his report dated 10 August 2006 Dr Wright states:

Previous Epilepsy: [Ms Kneebone] had "grand mal" seizures since age of 21, usually associated with sleep. Usual trigger is sleep deprivation, during sleep and stress. Status epilepticus in 1988 during pregnancy, however, noted to have hypocalcaemia at the time. ... Last generalised convulsion in 2000.

Recent turns: [Ms Kneebone] described that she was reasonably well until August 2005, since then she had had quite a lot of stress in her former workplace. She described 3-4 major turns, the most recent event being on 6/5/06. She mentioned that she felt tired the night before and during the afternoon on 6/5/06 itself she was talking to her sister and mother and mid conversation she felt unwell over a minute or so and felt like she was passing out. Her sister noted that there was no reply mid conversation, she was noted to be pale, speaking nonsensical and random words. Elizabeth has at best a patchy recall of the event itself.

...

Another in August '05, she felt light-headed during a karate class, she did not sustain any head injury at the time, she rested and then felt she was able to convey her wishes to the rest of the participants. The second episode in 2005 again was after a session of karate, while driving she felt light-headed, she lost her way and actually stopped on the side of the road. When she got home she was noted to be pale, speaking incoherently with random words, again with patchy memory of the episode.

[19] Ms Kneebone says that it was following the incident over the presentation that she started to notice snide comments being made by Ms Mildon, aimed at her in the guise of harmless jokes. She said the comments referred to such personal things as the clothes she wore, the food she ate, as well as remarks about her family, particularly those who had a mental illness.

[20] By way of example, Ms Kneebone told me that Ms Mildon would say things such as “...*don't you ever eat a normal lunch like other people?*”; “...*don't you iron your clothes? I can see peg marks on that top*”; “...*that looks like a pyjama top you're wearing*”, “...*my brother Peter [Ms Kneebone's brother] is odd until you get to know him*”.

[21] Ms Kneebone says also that Ms Mildon would not say “*hello*” when she came into the office and found herself starting to “...walk on egg shells...” around her. She says Ms Mildon would speak with Ms Reti, and exclude her.

[22] In answer to the statements attributed to her (paragraph 20 above), Ms Mildon says that following an incident where Ms Kneebone had fallen off a deck and hurt her ankle, Ms Reti had tried to encourage Ms Kneebone to eat a more balanced diet. Ms Mildon also suggested to her that it was not healthy to graze through the day on chocolate bars, liquorice, nut bars and so on. Ms Kneebone told me she was really irritated about the comments by Ms Mildon and that she thinks Ms Mildon knew it irritated her.

[23] Further, Ms Mildon says, the comments about Ms Kneebone's clothes were done in a complimentary fashion. She told me Ms Kneebone had a particularly attractive top in pretty colours which looked very comfortable and cosy and that she [Ms Mildon] did say it “...*looks cosy like pyjamas*”. Ms Mildon says that she is surprised that Ms Kneebone took offence at this. She was unaware of it prior to hearing it at the investigation meeting and that was not how the comment was intended. In response Ms Kneebone says that it was not a floral top; it was a blue and white striped top, and that Ms Mildon said “...*you're wearing PJs*” or something to that effect.

[24] Ms Kneebone says that the work environment was very hostile. When I asked her to explain that at the investigation meeting she said there were no warm hellos. She said in fact Ms Mildon wouldn't say hello. In response Ms Mildon says that after the mediation (which took place in June 2005) she always made sure she said good morning, but after July 2005 that she stopped. She said she herself had had to go onto anti-depressants due to the stress dealing with the issues between her

and Ms Kneebone. Ms Mildon says she would usually wait to see if Ms Kneebone would say good morning and when she didn't Ms Mildon maintained the silence.

[25] Ms Mildon says that Ms Kneebone had a total inability to appreciate someone else's situation. She says that throughout this process she has continued to be polite to Ms Kneebone, but Ms Kneebone was rude and aggressive toward her. She said she could no longer talk about anything personal in front of Ms Kneebone and she stopped talking about her personal life. She did however tell Ms Kneebone about her father being ill. Mr Mildon died a month before the investigation meeting. She said that through that time she had a lot of support from Ms Reti and Mrs Law but not from Ms Kneebone.

[26] Ms Kneebone told the investigation meeting that she felt excluded and when I asked her about that she told me that she did not feel supported. She wanted to feel part of the team.

[27] Ms Kneebone says she was not supported in the workplace. Mrs Law disputes that. Mrs Law told me she gave Ms Kneebone more administrative support than all of the other field workers combined. She said that Ms Kneebone would frequently ask for her assistance with various tasks including the use of a computer, particularly when she was organising events. She said that Ms Kneebone was also given what equated to eight working weeks' paid sick leave. She said she was aware that Ms Reti was upset because Ms Kneebone had received the paid sick leave benefit whereas, Ms Reti had had to use her own sick leave and then her holidays to look after her terminally ill mother. Mrs Law says she believed that SWF was very concerned to do the right thing by Ms Kneebone and to help her if at all possible.

[28] Ms Mildon says Ms Kneebone was prone to displaying unusual behaviour at the workplace. For example, it was common ground that on Tuesday, 15 March 2005 Ms Kneebone's sister Julie visited the office shortly before lunch time. The two sisters had a cup of tea together and Ms Kneebone then went to the airport. While having their tea Ms Kneebone had used all the milk and she left the empty milk carton in the fridge when she left for the airport.

[29] After Ms Kneebone returned, she went to make herself another cup of tea but there was no milk. Ms Kneebone complained angrily to Ms Reti and demanded that she buy fresh milk for her. Ms Reti does not drink milk in her hot drinks and so she refused and told Ms Kneebone she was too busy. Ms Kneebone told Ms Reti that she was busier than her, had too much work to do and that all Ms Reti and Ms Mildon had done at a recent forum was to make some sandwiches and had not even thanked her for what she did at the forum.

[30] Ms Reti became upset and told Ms Kneebone that she had no right to be saying such things.

Public Trust Saga

[31] This incident dates back to April 2004, when Ms Kneebone was organising an education session on wills for the whānau support group she ran at SFW. She had arranged for a speaker from a private organisation which charged for its services in producing wills. Ms Mildon suggested Ms Kneebone should cancel the private speaker and instead ask someone to attend from the Public Trust. Ms Kneebone, asked Mrs Law to ring the private speaker and cancel his appointment. Mrs Law refused saying she did not think it was for her to do that, Ms Kneebone should ring and arrange the cancellation.

[32] Ms Kneebone then asked Ms Mildon who also refused and forcefully told Ms Kneebone that if she had properly thought through what she was doing she would not have got herself in a position where she needed to cancel the first speaker. Ms Mildon criticised Ms Kneebone for not being properly organised. Ms Kneebone responded very angrily to Ms Mildon's response. Mrs Law, who witnessed the incident, told me she was very surprised to see two professional workers behaving towards each other in such a manner.

Purple pen incident

[33] Ms Kneebone was in the habit of picking up pens from wherever she was working, walking away with them, and not returning them. Mrs Law said it got to the stage that she actually tied a pen to the telephone so it could not be taken away, because often she would have to answer the phone and take a message, but there would be no pen in sight.

[34] It was common ground that in 2004, following a request from Ms Mildon, Mrs Law arranged for each of the four employees to have their own colour coded pens, highlighters and post-it-notes. Ms Mildon's was purple.

[35] In her written evidence Ms Kneebone says that the purple pen saga occurred over a period of three days. However in her oral evidence at the investigation meeting she conceded that it felt like three days but it was possibly only one day and the next morning.

[36] The incident occurred when Ms Mildon approached Ms Kneebone and leaned over her and asked about a purple pen. Ms Kneebone says she asked three times, and then the next day did it again. Ms Mildon says she did challenge Ms Kneebone about her pen, because even though they were colour coded they were still going missing off her desk. Ms Mildon says she apologised to Ms Kneebone following this incident, and the apology was accepted.

[37] Ms Kneebone says that Ms Mildon began teasing her about picking up biro's and walking away with them and sometimes she included Mrs Law and Ms Reti in the joke. Ms Kneebone told me that the jokes were usually in the form of snide comments and harassment. She said she felt embarrassed.

[38] Both Mrs Law and Ms Mildon deny making snide comments to or about Ms Kneebone regarding the pens.

Exclusions

[39] The evidence presented in the written statements by Ms Kneebone was confusing with regard to her complaint that she had been excluded from discussions and committees. At the investigation meeting I asked Ms Kneebone to provide me with some examples of being excluded. I have set out the facts as I have found them for each of the examples Ms Kneebone provided to me.

Whanau support group

[40] In 2003 SFW began organising and running whānau support group meetings for clients. They were run in 6 to 8 week blocks, four times each year. SFW arranged guest speakers to speak to the members of the group on their specialist areas for example, psychologists, lawyers, and pharmaceutical representatives. The meetings took place each Wednesday at 7.00pm.

[41] Initially Ms Kneebone, together with Ms Reti organised and ran the groups. Ms Mildon had choir practise which coincided with the meeting times and was unable to assist. It was common ground that during 2004 Ms Reti ended up running the workshops on her own as Ms Kneebone had become unavailable due to her involvement in karate.

[42] In early 2005 Ms Kneebone, became aware that the programme for 2005 had already been drawn up by Ms Mildon with speakers and timetables allocated. The meeting start time was changed from 7.00pm to 6.00pm.

[43] Ms Kneebone's complaint is that she believed the change in the time was to fit in with Ms Mildon and Ms Reti and says that the change of start time meant she could no longer be involved. Ms Kneebone also told me she was not consulted.

[44] I have concluded that Ms Kneebone was part of the decision making regarding the 2005 program and that there was nothing sinister in the change of start time. Ms Kneebone conceded at the investigation meeting that at the beginning of 2005 the three fieldworkers got together and discussed the 2005 programme including the start times. Ms Mildon and Ms Reti wanted to move it to 6.00pm, but Ms Kneebone objected to the change in timing. Ms Mildon told Ms Kneebone that as

she and Ms Reti were running the meetings the start time would remain at 6.00pm. An argument ensued during which Ms Kneebone accused Ms Mildon of not being committed to the job.

[45] Ms Kneebone's complaint that starting the programme at 6.00pm cut her out completely because she never finished karate until 7.00pm is surprising. It was common ground that during 2004 Ms Reti took over the responsibility for organising and running the support group meetings on her own, because Ms Kneebone was at karate. This was when the meetings started at 7.00pm.

[46] Ms Kneebone maintained at the investigation meeting that she was excluded from the whole process of planning and just felt excluded. I do not accept that. I am satisfied that it is more likely than not that Ms Kneebone was included in the discussions (as she conceded in her evidence) about the change of start time and that the change was not for the purpose of excluding Ms Kneebone, but was in response to feedback from the group participants and the presenters.

Service management group

[47] Ms Kneebone claims she was specifically excluded from the service management group (SMG). This group is made up of representatives of a number of organisations providing support services to families and individuals with mental health problems. At their meetings the members of the group would discuss common issues and consider ways of managing them. Ms Kneebone was an SFW representative.

[48] Ms Kneebone told me of an incident in or about mid 2004, when she attended a network meeting facilitated by Mr David Baker. She suggested to those at the meeting, that she look into the role of a Judge, when dealing with people suffering from mental illness. The meeting agreed Ms Kneebone and Ms Roxy Haines (family facilitator for the Henry Bennett Centre (HBC), a role similar to the field worker role of SFW but in a hospital environment) would look into it.

[49] Ms Kneebone emailed Ms Haines a draft paper containing suggested questions to put to a Judge as part of the research for the paper. Ms Haines never responded. Ms Kneebone says she showed Ms Haines the paper at one of the following meetings. Ms Haines responded to Ms Kneebone "...you're not going to send it in like this are you Liz". Ms Kneebone found this comment to be deflating.

[50] Ms Kneebone says it was becoming increasingly difficult for her to attend the SMG group as she felt she was being excluded. She said that Ms Haines became quite sarcastic towards her, as did Ms Haines manager, Ms Beth McFadden. She said she had absolutely no idea what was going on, although she was aware that Ms Mildon and Ms Haines were increasingly teamed up together.

[51] At the investigation meeting Ms Kneebone told me that she thought that Ms Haines and Ms Mildon were becoming close and as a result Ms Haines stopped being close to her.

Relationship with Ms Roxy Haines

[52] Ms Kneebone claims the number and frequency of referrals she received from Ms Haines gradually decreased and it became apparent that referrals were coming to SFW, but were only going to Ms Mildon. The exception to this was on the rare occasion when Ms Haines referred a Maori family to Ms Reti. Ms Kneebone says her complaint is not the lack of referrals but that Ms Haines' friendship with her fizzled out. There were no more big hugs and Ms Mildon and Ms Haines would talk but she felt excluded. Ms Kneebone attributes this situation to Ms Mildon's growing friendship with Ms Haines.

[53] Ms Kneebone says that for long stretches between 2003 and 2004 she hardly heard from Ms Haines, but that she used to overhear Ms Mildon on the phone to her quite often. Whenever Ms Kneebone raised it Ms Mildon told her Ms Haines was referring all the sexual abuse cases to her because she was an expert in this area. The referrals would come in at the rate of about one each week. Ms Kneebone said that she had been working with SFW for 5 years and no one had ever referred these issues to her. She did accept that that could possibly be because she had no background in that area.

[54] Ms Mildon told me she had a good working relationship with Ms Haines. She told me Ms Haines was aware of her background and experience as a residential social worker and sexual abuse counsellor at the department at Social Welfare. Ms Mildon had worked as a sexual abuse counsellor with teenagers for about 12 years. She said Ms Haines would refer families who were dealing with historical and present day sexual abuse issues to her, because she had the understanding, experience and networks to call upon should they be needed. She had maintained her networks and had continued to attend conferences after leaving the Department of Social Welfare.

[55] I am satisfied that it is more likely than not that the referrals to Ms Mildon were families within which a family member had suffered a psychotic illness as well as sexual abuse. Ms Mildon did not provide counselling, she did however check that the family members had been referred to the appropriate agencies. Ms Kneebone did not have the background experience in this area and I accept Ms Mildon's evidence that sometimes, while working to support such a family, family members would disclose their own sexual abuse issues and it was useful to have an understanding of those issues and how to address them appropriately. I am supported in that conclusion by Ms Kneebone's evidence that sexual abuse is a serious area which needed to be handled by the right person. Not just anybody can provide appropriate services. Ms Mildon's experience meant she

already had established relationships with the right people to whom such referrals could be made quickly.

2004 Mediation

[56] Mr Peter Nielsen was the chairman of SFW for seven years until Mrs Jane Skeates became the Chairperson in 2005.

[57] On 5 April 2004, during a meeting, Ms Mildon responded to a request for feedback from Ms Kneebone. Ms Mildon says Ms Kneebone accused her of being rude and stormed out of the meeting. Ms Mildon described Ms Kneebone as being “...*nasty and aggressive*”. Ms Kneebone agrees that she walked out of the meeting but denies being nasty or aggressive. She says she walked out feeling disgusted.

[58] Ms Mildon made a request for mediation in an effort to try and solve the ongoing difficulties between herself and Ms Kneebone.

[59] Mr Nielsen, who was keen to resolve the conflict between the two employees, asked Mrs Law to research some available mediators and to provide him with the information. Mrs Law contacted an organisation called Listening Ear. On 29 April 2004, Ms Helen Appleby provided Mrs Law with a written proposal which Mrs Law passed onto Mr Nielsen.

[60] The information was then passed onto Ms Kneebone who was asked to consider participating in an informal mediation process. In her proposal Ms Appleby identified the need to:

- Understand the two individuals’ point of view on the situation
- Identify a way for the two individuals to work in a more cooperative manner and in a way that does not adversely affect other colleagues nor the performance of S.F. Waikato
- Enable the individuals to sustain this behaviour.

[61] The proposal also provided for all discussions to remain confidential. Ms Appleby set out the recommended steps:

- For “Listening Ear” to understand the culture and working ethos of S.F. Waikato. To collect facts on the situation and speak with the manager of the two individuals concerned.
- To meet with the two people together in order to introduce myself then individually to set up some ground rules and begin to explore each person’s point of view.

[62] If those steps were completed a specific detailed program would then be developed to address the situation which would include up to five one-hour sessions being undertaken.

[63] Ms Kneebone considered the proposal but decided Ms Appleby had already determined what the problem was and decided she did not want to be involved because she did not think she would

be heard. She said the letter was not very objective. She says it was worded in such a way that she was left feeling a decision had already been made as to the nature of the dispute and the steps to resolve them.

[64] Ms Kneebone's refusal to participate in that process is at odds with the evidence in her written statement where Ms Kneebone says that at that time in 2004 the workplace environment was unsafe for her. She said the SFW committee was increasingly aware of that and that Ms Mildon habitually went behind her back and she felt increasingly un-nerved around her. She says there was a "...undercurrent".

[65] On 5 May 2004, Ms Kneebone wrote to Mr Nielsen and advised him that she had apologised to Ms Mildon for the offensive remarks that she had made to her, during the 5 April meeting. In her letter Ms Kneebone advised Mr Nielsen:

I have already apologised to Maureen (almost immediately) for my "offensive" remarks and I am making every effort to 'get along' with her in the work environment. I have decided to overlook her role in the exchange which I found equally "offensive".

I feel that Appleby has overblown the situation in her report. Moreover, her statement that the situation "...is impeding the implementation of projects and activities" in SF Waikato, is simply untrue. SF Waikato has had a very productive past year. Judgements appear to have already been made. I certainly hope that this essentially trivial matter does not escalate into something far more serious.

As far as I am concerned we are getting on quite well and this is precisely what I find so perplexing. Why bring in a mediator? What does Maureen hope to achieve? I value the working relationship I have with my colleagues and am making every effort to work alongside each of them in a harmonious way. I am seeking assistance from my supervisor to achieve this and also to deal with the personal stress associated with it.

We have all worked together very well as a team and I see no reason why we cannot do so in the future. For my part the goodwill is there to do so. [my emphasis]

[66] Following receipt of Ms Kneebone's letter Mr Nielsen cancelled Ms Appleby's involvement and says until the end of 2004 Ms Mildon and Ms Kneebone appeared to be getting on much better.

[67] In answer to questions at the investigation meeting Ms Kneebone said that she did not want mediation in 2004 because of the concept that she was partly to blame. She said someone was bad mouthing her and that wasn't appropriate. She said mediation presupposes that she was to blame and she was expecting to feel unsafe.

Performance appraisal assessment – June 2004

[68] In June 2004 performance assessments were undertaken on the staff at SFW. It has since come to Ms Kneebone's attention that during her appraisal interview, Ms Mildon made a number of complaints about her relationship with Ms Kneebone.

[69] Ms Mildon says that by June of 2004 she had become quite stressed by Ms Kneebone's behaviour in the work place. She said that in her performance appraisal meeting she did spend some time talking about Ms Kneebone's behaviour as it was affecting her. She said she was being very honest about some of the difficulties she had, working with Ms Kneebone.

Allegations of bullying raised in June 2004

[70] Ms Pam Driscoll, a member of the SFW committee wrote to Mr Nielsen and the committee on 9 June 2004, outlining concerns she had that work place bullying against Ms Kneebone was an issue. Ms Driscoll outlined the committee's responsibility to ensure Ms Kneebone was protected from unfair and unreasonable interference in her work. In her letter Ms Driscoll refers to the fact that the committee had devoted an hour at two committee meetings discussing the relationship between Ms Kneebone and Ms Mildon.

[71] At the investigation meeting I asked Ms Driscoll where she obtained her information in relation to the problems between Ms Kneebone and Ms Mildon and how it was that she could make the conclusion that work place bullying was occurring against Ms Kneebone. Ms Driscoll acknowledged that she was relying on what she had heard second hand and that she had written the letter without talking to anybody first, including Ms Kneebone or Ms Mildon.

[72] Mr Nielsen told me at the investigation meeting that Ms Driscoll's letter was discussed at the next committee meeting; Ms Driscoll was present at that meeting. He told me there was a mixed reaction from the committee but in the end the committee concluded that no bullying was actually occurring at that time. He says the committee had knowledge of Ms Kneebone's letter of 5 May 2004 where she says there were no issues and that everyone was working well together as a team.

Barbara Laird incident

[73] Mr Nielsen says the relationship between Ms Mildon and Ms Kneebone appeared to be on track until January 2005.

[74] In January 2005, after Ms Haines had left her position with HBC, Ms Mildon visited Mrs Skeates and told her of a conversation she had had with the new Family Facilitator, Ms Barbara Laird. Ms Mildon told Mrs Skeates that Ms Laird had told her Ms Kneebone was difficult to get on with.

[75] Ms Mildon told me at the investigation meeting that the reason she spoke to Mrs Skeates about the problem was due in part to the difficulties she, herself, was experiencing, working with

Ms Kneebone. (This occurred soon after the disagreements about the timetabling for the whānau support group program for 2005).

[76] Mrs Skeates says she told Ms Mildon that it was not appropriate for her to be talking to her about the matter and that she should raise it with Mr Nielsen. Mrs Skeates then, for reasons unknown, relayed the conversation to Mrs Jean Kneebone, a longstanding member of the SFW committee and Ms Kneebone's mother.

[77] Mr Nielsen says Ms Mildon did raise the issue with him, but he did not think there was any need to tell Ms Kneebone. He, of course was not aware Ms Skeates had raised the matter with Ms Kneebone's mother. He told me he checked with Ms Laird who advised him it wasn't an issue, and there were no problems between the two.

[78] The information about Ms Mildon's conversation with Mrs Skeates soon filtered down to Ms Kneebone who contacted Mr Nielsen. Ms Kneebone perceived the comments made by Ms Mildon as an attempt by her [Ms Mildon] to ostracise her from the SMG group. Mr Nielsen advised Ms Kneebone that he had spoken to Ms Laird and that there was nothing to be concerned about.

[79] Following that incident Ms Mildon told Ms Kneebone that Ms Laird had asked Ms Mildon to be her external supervisor. Ms Laird had attended a shared lunch following her appointment as family facilitator. After lunch at SFW, Ms Laird had approached Ms Mildon and invited her to be her supervisor during her six month internship for her Masters degree.

[80] Ms Mildon decided to tell Ms Kneebone and Ms Reti about the invitation because she noticed Ms Kneebone listening in on the conversation and looking a bit peeved. Ms Mildon said Ms Kneebone became aggrieved and wanted to know why she [Ms Kneebone] was not asked. Ms Kneebone denies listening in on the conversation but says that when she asked why she hadn't been asked, she was joking.

[81] Ms Mildon said the following Wednesday Ms Laird approached her at one of the SMG meetings and told her that Mrs Jean Kneebone had told her SFW would not release Ms Mildon to be her supervisor. Ms Laird told Ms Mildon that Mrs Jean Kneebone had told her SFW had had problems with Ms Mildon the prior year. Ms Laird apologised to Ms Mildon for approaching her at work.

[82] Mrs Kneebone does not recall telling Ms Laird SFW had had problems with Ms Mildon, but does recall telling Ms Laird that Ms Mildon would not be allowed to be her supervisor.

[83] While giving his evidence at the investigation meeting Mr Down, a consultant engaged by the Committee to assist in the resolution of the problems between Ms Kneebone and Ms Mildon, told me he met with Barbara Laird after he became involved in trying to resolve the issues between Ms Kneebone and Ms Mildon. The purpose of his meeting was to discuss the matters raised by Ms Kneebone in her 11 April letter. He said Ms Laird agreed she had said something to the effect that it was sometimes difficult to work with Ms Kneebone, but she had not made a formal complaint to SFW and there was nothing to indicate that Ms Laird was part of a conspiracy to ostracise Ms Kneebone from the SMG Group.

11 April Letter

[84] Two things happened on 11 April 2005. Firstly there was a staff meeting involving only the four staff members at 9.45am. During this meeting the start time of the whānau support and education group was discussed. The minutes note that it was at this meeting, that Ms Kneebone requested the start time of the group to be moved to a later time. The minutes record:

Liz wanting time moved to later, but this was agreed to in January and speakers have already been advised of time change for cooler months. Rina and Maureen not wanting to change the time.

Liz left the meeting.

[85] It was following this meeting that Ms Kneebone then wrote to the committee regarding the comments made by Ms Laird in January. I have set out the letter below:

I am aware that there was a conversation between Maureen Mildon and Jane Skeates regarding myself, and specifically my interactions with the Family Facilitator, Barbara Laird.

Barbara was alleged to have said to Maureen that she found me “difficult” to get on with amongst other things.

I find it offensive for colleagues to “bad mouth” one another to committee members. It is destructive and “distasteful” and goes against the spirit of team work which is very important to me.

I am pleased that you have spoken to Barbara and ascertained that there was ‘no problem’ between the two of us.

Further, I would like to know the upshot of your meeting with Maureen. Was she misquoted? Or was she just engaging in destructive gossip for the sake of it? Either way it makes me feel very uncomfortable. I would like some closure on the matter.

If Maureen has a problem she needs to put it in writing.

[86] Mr Nielsen says he did not respond to this letter as he had already told Ms Kneebone, Ms Laird had told him there was no problem between them. That is most unfortunate in the circumstances, as this letter seems to be the catalyst for what followed. It seems to me that all Mr Nielsen had to do was to write to Ms Kneebone and answer her questions about his interactions with Ms Mildon.

Other matters raised in support of the bullying claim

[87] A number of additional matters were raised by Ms Kneebone in support of her claim that she had been subject to workplace bullying.

Exclusions

[88] Ms Kneebone noticed that during 2005 Ms Mildon and Ms Reti did a lot of things together and whilst she said it was not unusual, what was unusual was that they were going out to community centres together and to GPs surgeries together. She said that she mentioned that to Mrs Law and Mrs Law had agreed it was unusual.

[89] Ms Law disputed this occurred in 2005. Mrs Law's recollection is that Ms Reti and Ms Mildon did a lot of work together during Mental Illness Awareness Week in March 2003, not 2005. Mrs Law told me it was unusual because the field workers could cover a lot more ground if they went out as individuals.

[90] I am satisfied it is more likely than not that the situation with Ms Reti and Ms Mildon working closely together occurred in 2003 and not 2005. I am supported in this conclusion by Ms Mildon's evidence that she worked with Ms Reti because of the cultural environment in which they worked. She told me she wanted Ms Reti to meet all of her contacts to introduce her and so they could understand that as a Kāwhena, Ms Reti was available for referrals. Ms Reti had commenced employment in late 2002. It seems logical that in March 2003 Ms Mildon's wanting to introduce Ms Reti to her contacts in the event they should ever need the services of the SFW Kawhena.

[91] Ms Kneebone says the atmosphere at work became a 'them and us' situation with them being Ms Mildon and us being Ms Kneebone. She said Mrs Law was not as friendly to her and her relationship with Ms Reti suffered. She said by 2005 she also started to think the committee were taking sides against her. She found it a very distressing time and felt very alone.

Medication issues

[92] Ms Mildon spoke to Mrs Jean Kneebone about a meeting she had attended on 18 February 2004. Ms Mildon was concerned because Ms Kneebone had told family members it was okay to adjust their medications and that she did it all the time. Ms Mildon says she didn't go into any detail about what had been said but she told Mrs Jean Kneebone that Ms Kneebone's behaviour had been difficult and suggested it would be a good idea if Ms Kneebone saw her GP. Ms Mildon also raised a concern about Ms Kneebone self adjusting or going off her medication.

[93] Mrs Jean Kneebone says she was concerned that a field worker was over stepping boundaries. At the investigation meeting, however, Mrs Jean Kneebone accepted that it was reasonable for Ms Mildon to raise the issue given the close relationship that Ms Mildon and Ms Kneebone had had in the past, but she felt that it was going too far when Ms Mildon told her Ms Kneebone had gone off her meds. Mrs Jean Kneebone says she did not know Ms Kneebone was on anti depressants.

Staff meeting incident

[94] On 20 April 2005 Mr Nielson attended a staff meeting at the SFW offices. He arrived at 9.00am and all 4 employees were present. The meeting started well. During the meeting an issue relating to hours of work and time off in lieu was raised by Ms Kneebone. Both Mrs Law and Ms Mildon gave evidence that Ms Kneebone made personal comments about Ms Mildon during the discussion.

[95] It was common ground that the ensuing discussions between Ms Kneebone and Ms Mildon became heated. Ms Mildon and Ms Kneebone both had several flare ups during the meeting, which Mr Nielsen said he could not control. He said that he could see that there was definitely a problem, but that there were faults on both sides. He said there were more personal accusations coming from Ms Kneebone than from Ms Mildon.

[96] Mrs Law's evidence of that meeting confirms a number of subjects were covered, including time off in lieu. She says Ms Kneebone, made some personal comments aimed at Ms Mildon, which Mrs Law did not consider to be appropriate. She says Ms Kneebone made accusations about Ms Mildon's attitude towards her and the inability of the management committee to act properly.

[97] Following the meeting Ms Mildon asked once again, for mediation assistance but Mr Nielsen told her that the option for mediation assistance had disappeared because Ms Kneebone refused to attend and to participate in the mediation process offered in 2004. Ms Mildon wanted to know what he would be doing about the conduct of the meeting. Mr Nielsen advised her the committee would deal with it.

[98] Ms Kneebone says that initially she thought the meeting was to address her 11 April letter. However, that was not the case. She says that during the meeting and in relation to the issues about hours of work, she suggested the staff document hours owed to SFW. She says they then got onto the subject of overtime. She says Ms Mildon told the meeting that she never works from home. Ms Kneebone says she was genuinely surprised and said so, and she asked Ms Mildon, if she never worked from home how did she make up her hours. At that point Ms Kneebone says Mr Nielsen

turned on her and said “...*you can't say that, that's it, I am leaving, I don't have to put up with this.*” Ms Kneebone said she was genuinely puzzled by that reaction.

[99] Ms Kneebone also says that immediately following the meeting Mr Nielsen spoke with Ms Mildon. Ms Kneebone described that conversation as being two people in deep conversation for at least ten minutes. Ms Kneebone took that as being a bad thing, but could not explain to me why she felt that.

[100] Mr Nielsen denies turning on Ms Kneebone at that meeting. He accepts that he may well have told Ms Kneebone that she could not accuse people of things which she did not have all the information about. He says, and Ms Kneebone agrees, that he had to ask her to stop making comments, and informed everybody that the meeting was closed. Further, he says, and Ms Kneebone accepts, she continued to speak as people left.

[101] Ms Kneebone then left the office and took the rest of the day off.

[102] After this meeting, Mr Nielsen and the SFW committee agreed to bring in external assistance to try and resolve the difficulties between Ms Kneebone and Ms Mildon.

[103] Ms Kneebone wrote to Mr Nielsen again, on 26 May 2005. In her letter she outlined to Mr Nielsen that she was still waiting to hear from him since her letter dated 11 April and asking him to respond to the questions in that letter or at least give some indication that he was following the matter up. In her letter she stated that she found it offensive that field workers were bad mouthing one another to committee members. She also said that it was offensive that field workers were engaging in destructive gossip about the family facilitator.

[104] Ms Kneebone's letter completely ignores the fact that by the time she wrote this letter she was fully aware the Committee had engaged Mr Down to assist SFW in resolving the difficulties between her and Ms Mildon. Ms Kneebone had attended a meeting with Mr Down on 4 May 2005 where she was advised the purpose of the meeting was to discuss the issues she had with Ms Mildon. The meeting had taken about one and a half hours.

Mr Down's Involvement

[105] Following Mr Nielsen's exposure to the difficulties encountered at the 20 April 2005 staff meeting, and as already set out, the SFW committee at its April 2005 meeting, determined to bring in external assistance in an effort to assist in the resolution of the relationship problem between Ms Kneebone and Ms Mildon. The committee engaged Ann Aitken & Co to undertake this task. Mr

Allan Down was the consultant engaged to assist SFW with the problem and, on 4 May 2005, having set out the agreed terms of reference, he met individually with Ms Kneebone and Ms Mildon. Also present at the meetings were two committee members, Mr Richard Skeates and Ms Colleen White.

[106] Mr Down said that when he was engaged he was provided copies of Ms Driscoll's letter, and Ms Kneebone's complaint of 11 April.

4 May Meeting

[107] Mr Down had a pre-prepared list of questions which he asked each of the two ladies during their individual meetings. The questions were:

- How would you describe the relationship between you and Maureen/Liz?
- Without referring to specific events, can you tell us what mostly upsets you about Maureen/Liz?
- Was the relationship difficult from day one, and if not, can you identify when it turned sour?
- You have been contemporaries for around three years (Liz Dec 2000 Maureen March 2002) Have there been reasonably untroubled periods in between the incidents of conflict?
- What do you think is Maureen/Liz's biggest concern about the relationship, her main criticism of you?
- What do you understand to be the process for an employee to make a complaint to their employer?
- What impact, if any, do you think the conflict has on other staff? On the Committee? On external contacts of SF?
- To what extent are you to blame for the situation that has developed?
- Is anyone else culpable?
- What do you think the Committee should do?

[108] At the investigation meeting Ms Kneebone could not recall Mr Down asking structured questions of her. She says there were no specific questions relating to the bullying. Ms Kneebone told me, she felt like she was bullied during the meeting and did not like some of the questions. She told me that she was the victim and she did not ask to be bullied. She said she may have appeared un-cooperative at the meeting but in fact, she was feeling unsafe. Ms Kneebone says Ms Mildon was causing her great harm and grief and it felt like a very adversarial process to her and almost like a second assault.

[109] Ms Kneebone said that she was unclear about Mr Down's roll in the early stages. She said she was led to believe he was a mediator or even a facilitator. She said Mr Down had made up his mind on issues very early on and had already determined the likely outcome of the dispute. Ms Kneebone says that the time Mr Down was engaged by the committee her health was deteriorating and that that was a direct consequence of the employer's failure to address her grievances. She said Mr Down failed to recognise that workplace bullying was the cause of her deteriorating health.

[110] Mr Down says, and I accept, that the purpose of the meeting on 4 May was to gather information and to hear from both ladies about their concerns. The purpose of the meeting was not

to get their responses to allegations but to get their views of the relationship. I accept that Mr Down made this clear at the beginning of the meeting.

[111] Mr Down told me a second meeting was to be held after the 4 May 2005 meeting, and this was explained to both Ms Kneebone and Ms Mildon but no other information was given at that time. He told me the second meeting was to be held with both Ms Kneebone and Ms Mildon so they could hear things simultaneously and to help them see the position that they were each putting their employer in.

[112] Mr Down says he used the structured questions as a prompt for Ms Kneebone to tell him her concerns. He said that for the majority of the meeting he was listening and Ms Kneebone did most of the talking. He said he was not there to pass judgment. Mr Down says Ms Kneebone told him about all the issues she had raised during the course of the investigation meeting. He said he had a good grasp of the areas of concern to her, but there was not a lot of mention of work place bullying. He said when he asked Ms Kneebone what her problems and concerns were; she outlined the incidents set out in this determination. He says Ms Kneebone appeared to have no difficulty in the meeting and seemed happy to talk about the issues she raised.

[113] Mr Down says, having listened carefully to both Ms Kneebone and Ms Mildon he was not convinced that Ms Kneebone's allegation of work place bullying was substantiated. He was satisfied Ms Mildon had not embarked on a campaign to either destabilise Ms Kneebone to disadvantage her.

[114] Mr Down told me the committee and other workers had considerable empathy for Ms Kneebone in the workplace, but there was a genuine concern about her relationship with Ms Mildon.

[115] One of Ms Kneebone's complaints about that 4 May 2005 meeting was that Mr Down told her he would back Ms Mildon in any legal action. Mr Down told me he did tell Ms Kneebone that on the basis of what he had heard he did not think there would be any grounds for SFW to take disciplinary action against Ms Mildon. He says he did tell Ms Kneebone that if SFW took action against Ms Mildon he would back Ms Mildon to win any challenge to that action.

[116] Mr Richard Skeates, who was also present at that meeting, confirmed Mr Down's evidence about the discussions and atmosphere at the meeting. He said he doesn't recall the words used by Ms Kneebone but she was first up and there was an opportunity at the end of the meeting for her to tell Mr Skeates and Mr Down what she wanted. He said while she never verbalised it, he felt that what Ms Kneebone wanted was for Ms Mildon to be dismissed.

Mr Down's report

[117] On 23 May 2005 Mr Down presented the SFW committee with a full report on his discussions with Ms Kneebone and Ms Mildon. In his summary Mr Down says:

The animosity between the two is deeply felt by both. Each considers she is only minimally responsible for the situation that has developed, if at all. Each seems to have little understanding of what it is about her that upsets the other. Each regards the other as “not safe” – neither respects the other professionally or personally – neither could identify a realistic resolution. They agreed on one characteristic of their relationship: Liz referred to an undercurrent and Maureen described being on tender hooks. Both said the relationship had run into trouble pretty much from the start. Consequently the various incidents that have occurred in recent months are symptoms of a malaise built up over three years.

[118] Mr Down concluded:

There is no single or simple solution. The Committee needs to adopt several strategies both short and long term. They are not guaranteed to normalise the working relationship between Maureen and Liz, but they are necessary to create the best conditions for that to occur. The strategies will put obligations on the two staff concerned and the Committee. (Neither of the two staff will be satisfied with the conclusion that they have both contributed to the dysfunction but that cannot deter the Committee.

[119] Mr Down then set out recommendations for further action. The first recommendation was:

That representatives of the Committee (who and how many to be decided) meet with Liz and Maureen together, to inform them of the conclusions of the investigation and these recommendations, if adopted. The two staff will also be advised of how the Committee will deal with conflict in future, in terms of the House Rules generally and misconduct in particular. This opportunity should also be taken to clarify the obligations of employers and employees in respect of stress.

That the same small group meet with Liz and Maureen separately to give further feedback personal to them.

[120] Mr Down noted at the end of his report that mediation had not been suggested as he was not optimistic that it would be of much benefit at that time, however, if both employees were willing and wanted to use mediation then he advised the Committee, it should support it.

[121] Mr Down's overall impression was that the two field workers clearly did not relate well to one another on a personal level. They just simply did not see eye to eye and that this had manifested itself in unprofessional and discourteous behaviour in the work place. Mr Downes said that he was always aware that Ms Kneebone considered herself to be the subject of work place bullying and that it was an important point for him. However, after meeting with both of Ms Kneebone and Ms Mildon he was certain that this was a case of two people not getting on with each other, rather than work place bullying. Mr Down said that unless he was prepared to wholly accept Ms Kneebone's perception of all of the issues she raised, they could not have a fruitful discussion with her.

[122] This report was not provided to either Ms Mildon or Ms Kneebone. It was Mr Down's intention to discuss his conclusions about the individual's in separate meetings after a joint meeting

on 31 May. Unfortunately those meetings never took place; although Mr Down did inform Ms Kneebone of his conclusion that workplace bullying had not occurred.

31 May meeting

[123] Unfortunately the process the committee had approved which included a meeting with both ladies present, never continued. Ms Kneebone refused to attend the joint meeting with Ms Mildon.

[124] On 27 May 2005 Mr Nielsen rang Mr Down and advised him that Ms Kneebone would not attend a joint meeting. Mr Down said he was surprised at this and thought there may have been a misunderstanding. On the basis of his first meeting his impression was that while Ms Kneebone and Ms Mildon clearly did not get on it was not so bad that they hated each other with a vengeance.

[125] Mr Down suggested to Mr Nielsen that he [Mr Down] talk to Ms Kneebone to find out why she did not want to meet with Ms Mildon. Mr Nielsen agreed with this course of action.

[126] On 31 May 2005, Mr Down and Mrs White met with Ms Kneebone where he explained he was assisting the committee in trying to resolve the difficulties between her and Ms Mildon. He says he told Ms Kneebone that the committee had adopted the suggestion of a joint formal meeting and it was important for that process to go ahead. He expressed his surprise that Ms Kneebone had refused to attend the joint meeting and needed to explore her reasons for doing so.

[127] He said Ms Kneebone was very confrontational in her reaction to his question. She abruptly asked whether the committee was going to respond to her letter of 11 April. He said that the letter had not been overlooked but for the moment he needed to know why she would not attend a joint meeting. He said he tried to explain that the committee wished to concentrate on getting her and Ms Mildon to work more professionally together and needed to concentrate on looking forward not backward. Half way through this explanation Ms Kneebone stood up and walked out of the room.

[128] Mr Down says Ms Mildon was willing to work towards helping to repair the working relationship whereas Ms Kneebone was not. He recommended SFW apply to the Employment Relations Service for mediation assistance as there did not appear to be any other realistic option.

[129] I asked Ms Kneebone at the investigation meeting to help me understand why she had refused to meet in a joint meeting. Ms Kneebone would not answer the question directly. Eventually, she told me she would not attend because “...*She [Ms Mildon] bad mouthed me*”, she said, “*I consider that to be a serious offence*”, she said, “*people were ostracising me*” and she referred once again to the Barbara Laird incident.

1 June 2005 Letter

[130] On 1 June 2005 Mr Nielsen wrote to Ms Kneebone outlining the committee's disappointment that she had refused to meet together with Ms Mildon. In his letter Mr Nielsen says:

...The meetings were the beginning of a process aimed at resolution and the Committee wanted an inclusive approach. It always seemed likely to the Committee that there would then need to be further meetings and last Tuesday, the Committee resolved that the Committee representatives meet with you and Maureen together, to explain our assessment of the situation and the strategies for resolution. It was the Committee's wish that you both hear precisely the same information. Richard, Colleen and Alan would then meet with you individually, to discuss personal matters.

Your refusal to meet with the Committee representatives and Maureen is regrettable and disappointing. It seems to indicate a rejection of the inclusive approach we want. Your insistence that the Committee limit itself to responding to your letter of 11 April, similarly diminishes the prospect of a resolution that isn't entirely on your terms, and that could scarcely be a resolution.

The Committee is now of a mind to make application to the Employment Relations Authority for mediation assistance. This will not be simply mediation between you and Maureen; it will include the representatives of the Committee as the Employer.

[131] Mr Nielsen advised Ms Kneebone she was entitled, and indeed encouraged her, to consult a lawyer and advised her that if no response to his letter was received by 7 June he would lodge an application with the Employment Relations Authority.

[132] On that same day Ms Kneebone wrote to Mr Nielsen outlining her "...disgust at the process which took place on 31st May. Ms Kneebone criticises Mr Down's approach to the meeting, stating:

...[F]irst Colleen and then Alan came into the SF room, sat down and chatted away lightheartedly with Maureen (about the colour of her stockings amongst other things!) Alan then said to me 'are we ready then?' or words to that effect. I was both appalled and humiliated at the lack of professionalism and discretion. It was a very awkward moment to say the least. I was not aware that others had prior knowledge of this meeting. The problem has been incompetently managed from the outset. As a result, the SFW environment has become increasingly unsafe for me to work in and I have suffered considerable stress.

It concerns me also that following the first meeting on May 4th Alan Downes came in to the SFW room to have a chatty conversation with the SFW receptionist.

I repeat, the HR process is supposed to be very confidential and private. It amazes me that due consideration to even basic protocol has not been observed. Confidentiality is supposed to be a given!

With all due respect, I am not quite sure what was the point of having two committee members who are unfamiliar with the complaints process getting in on the act.

Needless to say, my grievances are intensifying and I fully intend to take this matter further.

In summary, I felt that the aforementioned meeting on May 31st was a total waste of time. I did not feel as though I was being heard or taken seriously.

There seems to be (at least) two agendas going on here:

- 1) I understand that this whole business is about me making a complaint about both Maureen's professional practice and her behaviour towards myself. The latter in the form of allegations about myself to others, (And we *still haven't got to the bottom of this!!*) and her persistent 'bullying tactics'.

- 2) It seems that the other agenda is about Maureen and I 'putting the past behind us' and 'getting on with it'.

Personal grievance for disadvantage

[133] On 9 June 2005 Ms Kneebone wrote to Mr Nielsen once again outlining her concern at not being heard, and her concern that her complaint was being treated as a personality conflict. Ms Kneebone claimed SFW had been dismissive of her claim of work place bullying. She expressed her concern that she had tried several times to get the committee to take her concerns of Ms Mildon's unsafe practices seriously.

[134] In her letter Ms Kneebone also goes over the meeting on 20 April 2005 and sets out her concern that after the meeting Mr Nielsen had told Mrs Jean Kneebone that Ms Kneebone had been abusive. By now Ms Kneebone is feeling undermined and unsupported.

[135] Mr Nielsen accepts he told Mrs Jean Kneebone that Ms Kneebone had been abusive during that meeting. He says he said this because that was his view of Ms Kneebone's behaviour at the meeting.

[136] In her letter Ms Kneebone sets out a claim for unjustified disadvantage based on the following actions:

- a) Setting up meetings that are not appropriate to my complaints, thereby causing undue stress on myself and family.
- b) Sending a letter that was described by my professional supervisor as "nasty and threatening".
- c) Repeatedly failing to identify serious concerns brought to the committee's attention.
- d) Repeatedly minimising my concerns.

[137] Ms Kneebone sought the following remedies:

The "remedy would be, firstly, for the committee chairperson to sit down and explain to me what was behind the comments made by Maureen Mildon to Barbara Laird. I have written two letters about this and have yet to receive a reply. And secondly for the chairperson to take seriously my complaints about bad work practice that I brought up at the first HR meeting with Alan Down in the presence of two committee members.

[138] Ms Kneebone asked for mediation assistance and advised that if she did not get a satisfactory response she would take her personal grievance to the Employment Relations Authority. Ms Kneebone then states:

Please take note: This is not about a "personality conflict". It is about my serious concerns about a colleague. These concerns related to her 1) bullying tactics, and 2) unsafe work practices. I look forward to your prompt reply.

[139] On 14 June 2005, mediation assistance was organised and scheduled for 17 June. On 16 June Mr Skeates wrote to Ms Kneebone acknowledging her letter but not responding to the content of it. During this time Mrs Jean Kneebone resigned from her position on the Board of SFW.

[140] Mediation took place on 17 and 30 June 2005. Between 23 June and 3 July 2005 Ms Kneebone was on paid sick leave.

[141] On 3 July 2005, Ms Kneebone wrote again to Mr Nielsen and to the committee. The letter contains a number of statements relating to what occurred and was said in mediation. Mediation is a confidential forum. Anything said between the parties is confidential and is not admissible as evidence. I have therefore disregarded all statements made in Ms Kneebone's letter which refer to or form part of statements made in mediation (section 148, Employment Relations Act 2000).

[142] In her letter Ms Kneebone is critical of Ms Mildon and says:

Maureen's bullying tactics are sly, underhand and sneaky. Her chief strategy is to pit others against me and stir up trouble within different groups, for example in the SF Waikato committee and in the Family Facilitator Project Management Group.

[143] Ms Kneebone outlines in her letter how hurt she was about her sense that Ms Haines was ignoring her and phone calls, referrals etc were going directly to Ms Mildon. She says in her letter that she felt "...frozen out..." of the group and that she had been subjected to put downs from Ms Haines and another member of the group. Ms Kneebone lays the blame for those behaviours squarely at Ms Mildon's feet and says:

Maureen has launched a campaign amongst the committee and the Family Facilitator Project Management group to undermine my personal and professional integrity. This has resulted in people who were once trusted and respected colleagues "ganging up" against me fuelled by Maureen's destructive, divisive and untrue gossip. This all has very serious implications and I fully intend to get to the bottom of it, if for no other reason than to restore my good name.

[144] In her letter Ms Kneebone described the impacts her workplace situation was having on her health as insomnia, anxiety, depression and workplace stress. She attributes her symptoms to Ms Mildon's bullying and the lack of action being taken by SFW. She states:

It has appeared to me that the SFW committee are shifting the responsibility for this unfortunate situation by conveniently calling it a "clash of personalities!" Rubbish!! This is Work Place Bullying in it's most conniving, underhand and sinister form.

[145] Ms Kneebone concluded by suggesting they develop some agreed upon ground rules to prevent bullying happening again and asked for a prompt reply to her letter.

[146] On 6 July 2005 Mr Nielsen wrote to Ms Kneebone regarding a written complaint he had received from a family member client of SFW dated 10 June 2005. Mr Nielsen handed Ms Kneebone a copy of the letter which sets out the clients' view of Ms Kneebone's interactions with her. The client described feeling "...speechless, hurt and embarrassed.." after being criticised by Ms Kneebone. Between 10 June and 6 July 2005 Mr Nielsen met with the client to ascertain what steps the client wanted taken. Mr Nielsen invited Ms Kneebone to meet to discuss the letter.

[147] A meeting never occurred. Instead Ms Kneebone responded to the complaint in writing. Ms Kneebone advised Mr Nielsen that she had apologised to the client on the day she was in the SFW offices because the client looked "...deflated..." after she had told the client it was inappropriate to discuss her sisters condition in front of other staff members and she should speak with her on a one on one situation. Ms Kneebone states that she will now be taking legal action as the situation had become too serious for her to deal with on her own.

8 July meeting

[148] A meeting took place at Mr Down's residence in Hamilton on 8 July 2005 to discuss Ms Kneebone's letter of 3 July. The meeting lasted 2 and ¾ hours. Present at the meeting were Mr Down, Mr Skeates and Ms White from SFW committee, Ms Kneebone and Mrs Jean Kneebone.

[149] Mr Down opened the meeting by explaining it was necessary for SFW to consider a response to Ms Kneebone's notified personal grievance. He told her that the committee would investigate her complaints and attempt to resolve them. He said the purpose of the meeting was to listen to Ms Kneebone's grievances and complaints so that they could consider them and respond and take action if appropriate.

[150] Mr Skeates told me the meeting started well but deteriorated quickly. He said he did not have a lot of input. He says Ms Kneebone and Mrs Jean Kneebone wanted to know why Mr Skeates was there and what competence he had. Mr Skeates said he admitted to Mrs Jean Kneebone that he was out of his depth but that Mr Down was there to assist SFW. He says that at that point the meeting deteriorated but Mr Down got it back on track. Mr Down asked Ms Kneebone and Mrs Jean Kneebone what they wanted out of the meeting, but no discernable response was made in answer to that question.

[151] Ms Kneebone says that during the meeting Mr Down commented that he would back Ms Mildon if she was sacked as a result of this process. Mr Skeates says there was no indication or implication at the meeting that anyone was to be sacked as a consequence of the dispute between Ms Kneebone and Ms Mildon. He said they were not trying to sack anybody. They were trying to fix the problems.

[152] He says that he recalls the meeting started with Ms Kneebone being confrontational. Both Ms Kneebone and Mrs Jean Kneebone were very critical of the management committee and Mr Nielsen. Ms Kneebone believed her assertions that she was a victim of workplace bullying were not being taken seriously. Mr Down says, while the meeting ended on a positive note with

handshakes and hugs all around, because Ms Kneebone had been very difficult in the meeting, not a great deal was achieved.

[153] Mr Skeates told me at the investigation meeting that at no stage had the committee or the subcommittee determined that Ms Kneebone was the problem. He said SFW had determined that there was degree of fault on both sides. He said throughout the whole process, Ms Mildon had always been willing to participate in the process, while Ms Kneebone was not. He said her emotional and unprofessional behaviour obstructed the efforts to resolve the issue.

[154] Mr Down told me Ms Kneebone wanted to focus on her allegation that she was a target of workplace bullying and she took some time to describe the various incidents in support of her claim. He said most of what he heard that day, he had heard previously and that there was nothing new. He indicated that after all they had heard and seen they did not consider it was possible to characterise the problems as work place bullying. He said this was not a situation where there was a perpetrator and a victim. In the committee's view the situation fell considerably short of that – it was a case of two people not working well together, both were to blame.

[155] Ms Kneebone did not accept this. She said that they obviously did not believe what she was saying and thought that she was not telling the truth. Mr Down said that he tried to assure her that this was not a case of not believing her, but rather that SFW did not share her opinion of the situation and the incidents which she had described. He said that he explained to Ms Kneebone it was common for people to have different opinions of incidents and what was meant by the words people said. He said he pointed out that SFW had listened to her and Ms Mildon and considered that the basic problem was their inability to relate to one another on a personal level.

[156] Mr Down said they discussed the state of Ms Kneebone's health. SFW was aware that Ms Kneebone had been experiencing symptoms of insomnia, anxiety and depression because she had outlined that in her letter on 26 May. He said the committee were concerned that Ms Kneebone was not fully fit to work and carry out her responsibilities when working with families. The role is, at times demanding, and requires empathy and a strong sense of professionalism and an ability to remain objective. Mrs Jean Kneebone suggested that Ms Kneebone needed more time out.

[157] It was agreed that Ms Kneebone would proceed on two weeks leave on pay. Ms Kneebone told me she felt it was a relief to have a break from the atmosphere at work. She confirmed her sense of relief in a letter to SFW dated 9 July 2005 where she expresses her gratitude for the two weeks off as the ordeal had taken its toll on her. In her letter Ms Kneebone requests, once again,

that SFW investigate her claims of workplace bullying and asked SFW to stop trivialising the problem.

[158] Mr Down gave evidence that while the meeting ended positively Ms Kneebone was not able to properly and rationally discuss the issues. He says the most concerning example of this was her refusal to acknowledge that her employer had listened to what she had to say about alleged workplace bullying, but took a different view. She consistently maintained that she was absolutely correct. He said he could not reason with her.

13 July 2005 Letter

[159] On 13 July 2005 Mr Skeates wrote to Ms Kneebone confirming the discussions on 8 July 2005. The letter outlines Mr Skeates understanding of the actions which would remedy the personal grievance:

- Improved arrangements for the Committee to deal with staff concerns and complaints (“Restructuring” was suggested by Jean, and seemed to align with strategies adopted by the Committee on 24 May)
- An acknowledgement by the Committee that you had experienced considerable difficulties at work
- Resolution of the health issue
- That the committee consider allowing field officers to work at home for say, one day a week.
- An SF initiative to rebuild the relationship with PROPP
- (At a later stage) a team-building day.

[160] On the same day Mr Nielsen wrote to Ms Kneebone confirming the decision of the committee to provide Ms Kneebone with two weeks paid special leave due to concerns over Ms Kneebone’s health. Mr Nielsen requested Ms Kneebone to attend a doctor and provide a report confirming she was well enough to return to work, prior to returning. Mr Nielsen advised SFW would meet the costs associated with the doctor’s visit together with any specialist appointment if a referral was necessary. Included with the letter was a letter for Ms Kneebone to hand to her doctor which outlined Mr Nielsen’s understanding of the pre-requisite skills for a person working in the SFW office. He states:

Field officers need a high standard of inter personal skills, including a sensitivity to the needs of others, tolerance and discretion. Above all, field officers must be prudent, have the capacity for objective analysis and clear thinking, the ability to remain calm and level headed under pressure and to maintain focus on what is important.

[161] Ms Kneebone found this paragraph offensive. In answer to questions at the investigation meeting Ms Kneebone told me the paragraph was offensive in the context of the conflict at work and would rather the paragraph had not been included. Ms Kneebone told me that by this stage she was feeling cornered and bullied. She felt trapped. She told me she had a sincere grievance and truly wanted to talk with her employers, but kept being told it was a personality clash. Ms Kneebone told me she was trying to tell her employers it was not a personality conflict. She told me

that she was not being treated properly by the committee and she wanted answers to her letters. She wanted the committee to ask her: *“What is it? Tell us about it?”*

[162] By 22 July 2005 Ms Kneebone had sought legal advice. Mr Boris Samujh wrote to Mr Nielsen and Mr Down on Ms Nielsen’s behalf regarding Ms Kneebone’s special paid leave and her dissatisfaction with mediation. A second letter that same day outlined to SFW Ms Kneebone’s belief that she had a personal grievance in relation to the requirement to provide a medical certificate. Mr Down then advised Ms Kneebone, through her representative that the requirement to produce a doctor’s clearance in order for her to return to work had been withdrawn. In advising this decision Mr Down states:

The employer’s request was prompted solely by a concern for Liz’s well being and that of her colleagues and clients. However, Liz is under advice and doesn’t wish to comply with the request so the Employer has agreed to withdraw it, in the knowledge that they have taken all reasonable steps to clarify any risk of harm.

[163] Ms Kneebone was, by this time, experiencing complex partial seizures, but had not advised her employer of this. It wasn’t until the investigation into this employment relationship problem that the employer found out about the existence of Ms Kneebone’s seizures.

[164] Ms Kneebone said that in her meetings with Mr Down she did not get the feeling that he was sympathetic toward her. She said she felt like the victim. She said she did not ask to be bullied. Ms Kneebone says that Mr Down belittled, marginalised and put her down, that he persisted in demoralising her, ignoring her, that he was biased towards Ms Mildon. She said in the meetings she has had with Mr Down she felt that there was a lot of bias, that she was not getting a fair hearing.

[165] Mr Down says the committee listened to Ms Kneebone’s complaints and tried to understand her allegations. Mr Down said that although the relationship between Ms Mildon and Ms Kneebone was far from good he was confident they could be helped to work together better. I am satisfied that SFW did investigate Ms Kneebone’s complaints. In his letter to Ms Kneebone’s representative on 2 August 2005, Mr Down sets out each of the incidents raised with him, his understanding of both sides of the story and his conclusion that workplace bullying is not present.

Mrs Skeates' discussion with Ms Kneebone’s external supervisor

[166] Mrs Skeates told me that Mrs Law contacted her on about 6 September 2005 and advised her that she [Mrs Law] was very concerned about Ms Kneebone. Mrs Law told her Ms Kneebone had taken two days off work and then arrived back in the office looking very unwell. Mrs Law told Mrs Skeates that Ms Kneebone seemed very distracted and was having trouble finishing sentences and that she would forget what she was talking about from one moment to the next. Mrs Laws’

response had been to talk to Mrs Kneebone, but Ms Kneebone said she was fine and to leave her alone. Mrs Law formed the view that Ms Kneebone was obviously not fine so she thought that Mrs Skeates should know. Mrs Skeates said she thanked Ms Law for letting her know and for making her aware.

[167] At the investigation meeting Ms Kneebone told me she did not realise she was not finishing her sentences. She recalled Ms Law raising it with her and she accepted Ms Law's actions were out of concern for a colleague and were quite appropriate. I have previously made comments about Ms Kneebone's medical diagnosis in paragraph 18 above.

[168] It was common ground that following her conversation with Mrs Law, Mrs Skeates contacted Ms Coker (Ms Kneebone's external professional supervisor) to enquire about the policy in relation to notification if somebody under her supervision was becoming unwell. Mrs Skeates says Ms Coker started to respond but then realised they were talking about Ms Kneebone and said it was actually inappropriate for her to comment. Mrs Skeates says she apologised. Ms Coker asked Mrs Skeates to let Ms Kneebone know that they had had that conversation. Mrs Skeates says that they were heading off to a conference and so did not tell Ms Kneebone what had taken place straight away. As Ms Skeates hadn't been able to catch up with Ms Kneebone the following week she sent her an email.

[169] The email sets out the fact that Mrs Skeates had contacted Ms Coker and confirms that no breaches of confidentiality occurred. This email was in accordance with Ms Coker's instructions.

[170] Ms Kneebone says this contact with her external supervisor was inappropriate and is further evidence that she was being undermined. I am satisfied it was entirely appropriate for Mrs Skeates to make contact with Ms Coker to discuss the process of notification if one of SFW's employees was demonstrating signs that they were becoming unwell. Further, I am satisfied that Mrs Skeates and Ms Coker did not discuss professional or work matters during their brief telephone conversation.

[171] I am supported in my conclusion by Ms Coker's evidence at the investigation meeting where she confirmed it is appropriate for employers to discuss health concerns about an employee she is supervising.

Memo to staff regarding family client relationships

[172] In October 2005 Mrs Skeates sent an email to all staff stating that it had come to her attention that some staff within the branch had been visiting family members during work hours. It was

common ground that SFW have a policy that if a close emotional relationship developed with clients, workers must make the appropriate referrals with other workers or agencies.

[173] Ms Kneebone described the memo as vindictive and she assumed that Mrs Skeates was getting at her. In answer to questions at the investigation meeting Ms Kneebone did not accept that it was possible that Mrs Skeates was trying to deal with a difficult issue in a way that went to all employees at the same time.

[174] Ms Kneebone says it was clear the memo was directed at her and her family and that this constituted a callous approach by the chairperson. In support of this complaint Ms Kneebone pointed to the use of the words "...I have no wish to make a witch hunt of this." in the memo. Ms Kneebone said that when Mrs Skeates came on as the chairperson her [Ms Kneebone's] health deteriorated and Mrs Skeates was picking on her. Ms Kneebone was of the opinion that Mrs Law and Ms Mildon had communicated to Mrs Skeates over this matter and speculated that they were the catalyst for the timing of the memo and the policy itself and that they had colluded to invoke this policy against her.

[175] In answer to questions at the investigation meeting Mrs Skeates confirmed the memo was directed at Ms Kneebone. She said it had been brought to her attention that Ms Kneebone was spending a lot of time with her family and she did not think it was appropriate. Mrs Skeates says:

[G]iven the informal process and difficulties which we had been experiencing between Ms Mildon and Ms Kneebone at the time, I did not want to make the situation worse by directly telling Ms Kneebone she was not permitted to continue working with her own family.

[176] When I asked her why she did not speak directly to Ms Kneebone, Mrs Skeates told me she was actually scared of Ms Kneebone.

[177] The memo was the first notification staff had received that they were not to take on their own family members or close friends as clients. Once distributed the memo became the subject of a discussion by all staff at a staff meeting, but by then it was too late.

[178] Mrs Skeates was fully aware at the time she wrote the memo that Ms Kneebone was challenging SFW over her perception that Ms Mildon was bullying her. By the time Mrs Skeates wrote this memo SFW had embarked on a process to try and resolve the ongoing difficulties between the two employees and was experiencing difficulties in getting cooperation in the process. It is unfathomable, that given the state of awareness over Ms Kneebone's health, and her underlying perception about how she was being treated, that Mrs Skeates would even have contemplated implementing a new policy which would, as she was well aware, impact only on Ms Kneebone.

[179] Mrs Skeates told me she had approached and spoken to Mrs Law about the time Ms Kneebone was spending on her family clients. Mrs Law told Mrs Skeates (in Mrs Skeates words) "...it was quite often, but ... Ms Kneebone's family were part of her client file". This struck Mrs Skeates as unusual so she took advice about whether it was appropriate. It became clear to me at the investigation meeting that the staff did not find it unusual.

[180] I find the memo written by Mrs Skeates constitutes a disadvantage. It was a change to Ms Kneebone's terms and conditions of employment. It was common ground that Ms Kneebone has always provided support to her family members during her employment at SFW. While that may not have been the ideal situation, and while SFW may have had sound reasons for wanting to change, any change to the implied term that Ms Kneebone could provide support to her family members needed to have been done in a more sensitive way and required consultation. The way in which the change of policy was implemented was wrong and did nothing to disabuse Ms Kneebone of her perceptions that she was being bullied in the workplace. If anything it heightened them.

Written Warning

[181] On 31 October 2005 after arriving for a staff meeting Mrs Skeates approached Ms Kneebone and advised her that she wanted to see her outside, privately. Ms Kneebone followed Mrs Skeates out to the SFW car park. Mrs Skeates asked Ms Kneebone why she had not gone to the regional meeting at Whakatane the previous week. Ms Kneebone said that her reason was the same as she had given a week ago. Her reasons were private and confidential.

[182] Ms Kneebone says Mrs Skeates continued to ask her why she did not go and finally Ms Kneebone told Mrs Skeates that she did not wish to continue the conversation with her, and that she would discuss the situation with her lawyer. Ms Kneebone says Mrs Skeates became increasingly upset and continued to ask her why she did not go to Whakatane.

[183] Ms Kneebone says she walked away towards the office but Mrs Skeates followed her and kept asking her why she hadn't gone to Whakatane. She said Mrs Skeates was shouting loudly at this stage and seemed very angry.

[184] When Ms Kneebone came back into the office Mrs Law came out of her office and told Ms Kneebone to answer Mrs Skeates. Mrs Law says (and Ms Kneebone confirmed) she told Ms Kneebone that she objected to Ms Kneebone's tone which she found rude.

[185] Ms Kneebone immediately left the office saying she was going out for a few minutes. She said she returned to SFW within half an hour and took part in the staff meeting.

[186] Ms Mildon and Mrs Law completed incident reports outlining what they witnessed during the interaction between Ms Kneebone and Mrs Skeates. Mrs Law states in the incident report she completed:

When I objected to Liz's tone and the fact she was involving another staff member she then turned on me saying that was being rude last time and it should be acknowledged. I told Liz that I found her way of communicating and what she was saying as totally unprofessional. Liz replied that she was disappointed in me, expected more support etc.

[187] The next morning on 1 November, Ms Kneebone told Mrs Law that she was upset that Mrs Law had butted in when she was talking to Mrs Skeates the day before. Ms Kneebone told me she was being assertive by telling Mrs Law how she felt about it, and was clearing the air. Ms Kneebone says Mrs Law become very defensive, and told her she had no right to bad mouth Ms Reti. Ms Kneebone says she then told Mrs Law that she had not bad mouthed Ms Reti. She said she had merely pointed out that Ms Reti could say anything to Ms Skeates and get away with it; whereas she [Ms Kneebone] gets ticked off for practically breathing.

[188] Mrs Law's recollection of the 1 November event is somewhat different. She told me Ms Kneebone came into her office, closing the door behind her, and came up right beside her. She said she felt a wee bit threatened and got up and opened the door because she did not want the door shut. She said Ms Kneebone's tone was shrill and aggressive and demanding. Ms Law said she would not discuss it any more and had to tell Ms Kneebone a number of times to back off. Mrs Law completed a second incident report which states:

Liz said that she felt that other staff members where (sic) getting away with being rude whereas she only had to move an eyebrow and get pulled up. I disagreed with Liz that that was the case. Liz then told me loudly that I had "my head in the sand" "had no moral gumption" "weak" "gutless" etc. and I asked her to leave my office. I then got (from Liz) a series of childish, sarcastic, over the top remarks..."

[189] Ms Kneebone denies that she was shrill, aggressive and demanding. She said that she had been trained in assertion. She was really annoyed that Mrs Law had interrupted her conversation the previous day and that in doing so Mrs Law had undermined her.

[190] Ms Kneebone says at the end of the day she went home and reflected on the incident on 1 November and decided to do the right thing and contacted Mrs Law via email and apologised. Mrs Kneebone explained to Mrs Law that her intention was not to upset her but to assert that she [Ms Kneebone] was upset when Mrs Law had intervened in a difficult conversation she was having with Mrs Skeates.

[191] Mrs Law returned her email on 2 November and told Ms Kneebone that no offence had been taken and outlined her view that staff do not always have to agree.

[192] On 2 November 2005 Ms Kneebone was advised that she was to attend a disciplinary meeting regarding her conduct on the Monday and that her conduct was of serious concern.

[193] The meeting took place on 4 November 2005. Ms Kneebone was represented at the meeting by Mr Samujh. The discussion at the meeting centred on Ms Kneebone's behaviour when Mrs Skeates tried to discuss Ms Kneebone's reasons for not attending the hui in Whakatane. Copies of the incident reports written by Mrs Law and Ms Mildon were provided to her.

[194] One and a half weeks later on 14 November Mrs Skeates issued Ms Kneebone with a formal written warning. Ms Kneebone says the warning is totally unjustified and has challenged it accordingly. Ms Kneebone says she is not entirely sure why she received a written warning. She thinks it was because she did not divulge her personal and private reasons for not going to the meeting in Whakatane. Mrs Skeates says that it wasn't about not going to the meeting; it was about the manner in which she had responded to her inquiries.

[195] I am satisfied that the warning was issued as a result of Mrs Skeates conclusion that Ms Kneebone's behaviour was unacceptably rude and uncooperative. In issuing the warning Mrs Skeates took into account the behaviour of Ms Kneebone the day after the original incident when she approached Mrs Law and berated her for interfering.

[196] However, I find that the employer's action in issuing the warning was unjustified. The employer is required to show that in its dealings with Ms Kneebone it acted fairly and reasonably in all the circumstances. Fundamental to the question of fairness and reasonableness is the concept that the employer will bring an open mind to the issues in question and that the employer has acted impartially and without any bias.

Bias includes situations where it appears persons charged with the responsibility of making decisions have so conducted themselves to lead an objective observer to conclude that they have closed their minds and were no longer giving genuine consideration to the issues before them. It relates not merely to the existence of some pecuniary or other interest in the subject matter of litigation but also to any predetermination of the issue sufficient to show a real probability that the issue will not be determined in an unbiased or impartial manner (*NZ Educational Institute v Board of Trustees of Auckland Normal Intermediate* [1992] 3 ERNZ 197).

[197] The reason for the warning was Ms Kneebone's conduct toward Mrs Skeates and Mrs Law on 31 October and 1 November 2005. This put Mrs Skeates' firmly in the issue and it was not appropriate for her to have made the final decision which put Ms Kneebone's job in jeopardy. Looking at this matter objectively a fair and reasonable employer would have appointed a different committee member to investigate and decide on the appropriate disciplinary action. Particularly in

this case, where Ms Kneebone was clearly sensitive to any and all actions being taken by SFW and Mrs Skeates had experienced difficulties with Ms Kneebone in staff meetings and had challenged Ms Kneebone when she had made sarcastic and offensive comments under her breath. I am not satisfied that SFW has discharged the burden of showing that Mrs Skeates gave proper and impartial consideration to Ms Kneebone's explanation.

Ms Kneebone's resignation

[198] On 14 October 2005 Mrs Kneebone was taken to Waikato Public Hospital following a collapse after experiencing dizzy spells and light headedness. At the investigation meeting Ms Kneebone acknowledged that she had been suffering from complex partial seizures. Such seizures can be brought about by stress. Ms Kneebone also acknowledged that she did not advise her employer about the seizures or that she had been experiencing them since August.

[199] Ms Kneebone then proceeded on sick leave on 24 November and resigned from her position on 5 December 2005 while still on sick leave. In her letter of resignation Ms Kneebone says that the committee's actions made it untenable for her to continue in her employment given the effect it was having on her health and the advice of her general practitioner.

[200] Following Ms Kneebone's departure, Mrs Skeates says she came into the office and discovered that Ms Kneebone had wiped all the files off the computer, some of which were common files and had removed a number of client files that she had been working on.

[201] Ms Kneebone admits she removed the files from the computer and took files she had been working on from the office. She said she wanted to remove any letters that might be incriminating or confidential. Ms Kneebone accepted at the investigation meeting that it was unusual to take files out of the office and that this was the first and only time she had done that.

[202] Ms Kneebone was asked to return her the files and any other property, including her keys, to SFW, which she did.

Did the resignation amount to a constructive dismissal?

[203] In coming to any conclusions under this head I must determine the following issues:

- was Ms Kneebone's resignation caused by a breach of duty on the part of SFW? And
- if there was a breach, was it sufficiently serious to make it reasonably foreseeable that there was a substantial risk of Ms Kneebone resigning? (*Auckland Electric Power Board v Auckland Provincial District Local Authorities Officers IUOW Inc* [1994] 1 ERNZ 168; [1994] 2 NZLR 415 (CA)).

Was Ms Kneebone's resignation caused by a breach of duty on the part of the WDHB?

[204] The basis of Ms Kneebone claim for constructive dismissal is that she resigned as a result of a breach of duty on the part of her employer, which is the third of the three non-exhaustive categories of constructive dismissal referred to by the court of Appeal in *Auckland Shop Employees Union v Woolworth's (NZ) Ltd* [1985] 2 NZLR 372.

[205] The conduct amounting to a breach must impinge on the relationship in the sense that looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. (*Malik v Bank of Credit and Commerce International SA (in liq)* [1998] AC 20; [1997] 3 All ER 1 (CA)).

[206] The Health and Safety in Employment Act 1992 requires all employers to ensure the safety of employees by taking all practicable steps to provide and maintain a safe working environment.

[207] Ms Kneebone says she was bullied in her employment from 2004 until she left in December 2005 and that this made the workplace unsafe. As set out earlier in this determination the concept of bullying has not been legally defined, however, I am satisfied that for behaviour to come within a broad definition of bullying the elements must include:

- repeated actions;
- carried out with the desire to gain power or exert dominance;
- carried out with the intention to cause fear and distress.

[208] Ms Kneebone and Ms Mildon heard each other's side of each complaint for the first time at the investigation meeting. While I have no doubt that Ms Kneebone's employment situation was making her unwell, I am not, on the balance of probability, able to hold SFW responsible for her situation.

[209] Ms Kneebone had no insight into her own personal behaviours and how they might be affecting those around her. She was provided with an opportunity in 2004 to undergo mediation to assist in resolving the difficulties in her professional relationship with Ms Mildon but refused, advising her employer that everything was okay.

[210] It is obvious to even the most casual observer that Ms Kneebone and Ms Mildon were having difficulties working together. But that does not mean Ms Mildon was bullying Ms Kneebone.

[211] I have seen no evidence that any of the incidents described by Ms Kneebone and attributed to Ms Mildon contained any intention to cause fear or distress for Ms Kneebone. Neither was there any evidence that Ms Mildon's behaviour was intimidating, malicious or insulting. I am satisfied

Ms Mildon did not attempt to deliberately undermine Ms Kneebone or to induce fear in her (see *Evans v Gen-I Limited*).

[212] Ms Kneebone, as required by her, raised her concerns on several occasions with her employer. I am satisfied that the employer met its obligations when it first investigated the concerns and then attempted to take steps to resolve those concerns.

[213] Mr Down and Mr Nielsen gave unequivocal evidence as to the steps SFW took to try and find a workable solution to the difficulties in the office. Ms Kneebone has not claimed that the process was unfair, just that the process did not meet her needs. Ms Kneebone reiterated a number of times during the course of the investigation meeting, her view that SFW heard Ms Mildon's side of the story but not hers. I do not accept that is an accurate picture of events. Mr Downs' evidence, which I accept, is that he spent about 90 minutes with Ms Kneebone on 4 May 2005 hearing her complaints all of which have been set out in this determination. From that lengthy discussion he was able to draw conclusions about the nature of the issues needing to be addressed.

[214] Ms Kneebone says that while the meeting did provide an opportunity for her to put her side of events, it was not adequate; she felt she was being silenced but has not been able to elaborate on that. Ms Kneebone claims SFW did not take her complaints seriously, that letters were not being replied to, for example the 11 April 2005 letter. However, Ms Kneebone did acknowledge that Mr Nielsen did respond to her on a couple of occasions and she recognised that he had a semblance of sympathy for her situation.

[215] I find the facts do not support a finding of constructive dismissal. The evidence shows SFW did everything it reasonably could, within the limitations imposed by Ms Kneebone's refusal to participate in any process to constructively improve her relationship with Ms Mildon. I find Ms Kneebone frustrated the employer's attempts to attain some accord in the workplace.

[216] Further, when Ms Kneebone became ill SFW provided for additional sick leave and insisted that she not return until she was well. Mr Samujh, in his final submissions contends Ms Mildon embarked on a course of conduct to get Ms Kneebone out of her job. I do not accept that submission. There was no evidence to suggest Ms Mildon wanted Ms Kneebone to leave her employment. Indeed, Ms Mildon was always ready and willing to participate in the processes adopted by SFW to assist in the resolution of the differences between the two workers.

[217] In coming to my conclusions in this matter I am mindful of the need not to trivialise Ms Kneebone's complaints. What I have set out on this determination does not mean I do not believe Ms Kneebone, but rather, I disagree with her. Ms Mildon's behaviours toward Ms Kneebone were

not unreasonable. Ms Kneebone lacks insight into the dynamics of the relationship between herself and Ms Mildon. She puts all the responsibility for the deterioration in their relationship on Ms Mildon. I find that Ms Kneebone's perception of Ms Mildon's behaviour and the seriousness of the behaviour is overstated and exaggerated. The incidents outlined by Ms Kneebone and answered by Ms Mildon at the investigation meeting do not constitute bullying, but are rather, symptoms of a failed and dysfunctional relationship.

Additional causes of action

[218] The claims outlined in the statement of problem are far reaching. I am satisfied that the claims relating to constructive dismissal, breaches of the Health and Safety in Employment Act, and the good faith provisions of the Employment Relations Act rely on the same facts and have been sufficiently addressed in my findings relating to the claim for constructive dismissal.

Breach of legislation

[219] Ms Kneebone has sought compliance with the Employment Relations Act 2000 and the Holidays Act 2003. As Ms Kneebone is no longer employed by SFW I am not required to order compliance, these matters were raised in Ms Kneebone's original statement of problem which was lodged before she had resigned from SFW. In any event, I am satisfied that the form and content of the Employment Contract between SFW and Ms Kneebone meets the requirements of the Employment Relations Act 2000. Likewise, other than not specifically mentioning the Holiday Act 2003 in the employment contract, there was no evidence to suggest SFW was in breach of any aspects of that Act. Similarly, apart from not specifically mentioning the dates of the amendments to the Health and Safety in Employment Act there was no evidence to suggest SFW had breached any aspect of that Act.

Unjustified actions

[220] In her amended statement of problem Ms Kneebone claims the following actions by the respondent are unjustified actions:

Bullying by various agents and employee of SFW – I have found bullying wasn't present in the workplace and that SFW, once alerted to the concerns of Ms Kneebone took all reasonable steps to try and resolve her concerns.

Demand by SFW for Ms Kneebone to produce a medical certificate for absence from work commencing 6 September 2005 – I am not satisfied the evidence supports a finding that the request for Ms Kneebone to provide a medical certificate was unjustified. Ms Kneebone had taken a considerable amount of time off work (in total she took an additional seven

weeks of paid leave). It was reasonable for SFW to be concerned that Ms Kneebone was seeking the appropriate assistance and a request for a medical certificate would confirm that she had sought medical advice. In any event, the request was withdrawn.

Allegations that Ms Kneebone was suffering from a mental illness with Ms Kneebone's external supervisor – Ms Kneebone says that during the conversation Mrs Skeates had with Ms Coker she told Ms Coker that she [Ms Kneebone] was suffering from a mental illness. I am satisfied that at no time during her conversation with Ms Coker, did Mrs Skeates discuss or ask specific questions on Ms Kneebone's mental state. Rather, Mrs Skeates was attempting to find out what process Ms Coker had in place to advise an employer, should a person under her supervision be showing signs of being unwell. This arose as a direct result of the genuine concern the committee had developed for Ms Kneebone's deteriorating health.

Issuing formal warning including a breach of good faith in how the warning was delivered – For the reasons outlined earlier in this determination I have found that Ms Kneebone was disadvantaged in her employment when she was issued with the written warning in November 2005. Mrs Skeates delivered the warning 10 days after the disciplinary meeting had been held. The letter was drafted on 10 November. No reasons were given for the delay in presenting the letter of warning. Mrs Skeates delivered the warning letter by hand on 14 November 2005 just prior to the commencement of a staff meeting. Ms Kneebone says this was a breach of good faith on the part of Mrs Skeates. While the timing of the delivery of the warning was unfortunate, I am not able to find Mrs Skeates was in breach of her obligation to act in good faith.

Indiscriminate surveillance and discriminatory harassment – there was no evidence to support this claim.

Locking Ms Kneebone out of her workplace – following receipt of her resignation, Ms Kneebone was asked to return the files she had removed and any property in her possession including the office keys. This meant that Ms Kneebone could not access the offices while she remained on sick leave during her notice period.

Ms Kneebone had entered the offices of SFW during the weekend, following her resignation and removed client files and deleted files off the SFW computer system. Given those actions by Ms Kneebone, I find the request to return her keys to her employer reasonable in all the circumstances.

Advising third parties of Ms Kneebone's termination of employment – Following receipt of Ms Kneebone's resignation, SFW wrote to its clients and advised them that Ms Kneebone had resigned. Ms Kneebone says the notice to clients was premature as she was still on sick leave. I accept, given all the circumstances of this case, it would have been more sensitive to wait until Ms Kneebone's notice period had ended. However, it was not unreasonable for SFW to notify its clients Ms Kneebone had resigned. The clients had a legitimate interest in knowing that Ms Kneebone had resigned from her position and would not be returning to her role.

Remedies

[221] I have found that Ms Kneebone was disadvantaged in her employment when Mrs Skeates established a new policy of field workers no longer have family members as clients and in the issuing of a written warning. Ms Kneebone is therefore entitled to remedies for this disadvantage. There is no issue of wages lost as a result of the disadvantage and therefore I consider it appropriate to award compensation for hurt and humiliation only.

[222] As already stated in this determination Ms Kneebone was very sensitive to all actions being taken by her employer during the period in which Mrs Skeates wrote the memo and issued the written warning. The employer was well aware of those sensitivities. At the same time the employer was well aware Ms Kneebone's health was deteriorating. I am satisfied Ms Kneebone suffered hurt and humiliation as a result of the unjustified actions of her employer and that the actions contributed significantly to Ms Kneebone's deteriorating health. In all the circumstances I would, leaving aside consideration of contribution, award Ms Kneebone \$6,000 pursuant to section 123(1)(c) of the Employment Relations Act.

Contributory conduct

[223] I am bound by section 124 of the Act to consider the extent to which Ms Kneebone's actions contributed towards the situation that gave rise to her personal grievance (being the disadvantage grievance), and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly.

[224] Ms Kneebone's actions did not contribute to situation relating to the issuing of Mrs Skeates memo. However, Ms Kneebone's actions towards her employer on the day Mrs Skeates asked her about the reasons for her non-attendance at the Whakatane Hui and the following morning towards Mrs Law were unacceptable and unreasonable. I am satisfied from the evidence that Ms Kneebone was rude and uncooperative in her dealings with Mrs Skeates and then Mrs Law. Accordingly I

find Ms Kneebone's actions have contributed 25% towards the actions giving rise to her personal grievance and her remedy will be reduced accordingly.

Schizophrenia Fellowship Waikato Incorporated is ordered to pay to Ms Kneebone the sum of \$4,500.00 as compensation pursuant to section 123(1)(c) of the Employment Relations Act 2000 within 28 days of the date of this determination.

Costs

[225] Costs are reserved. The parties are directed to attempt to resolve the question of costs between them. If they cannot do so they are to file and serve submissions on the subject and the matter will be determined

Vicki Campbell
Member of Employment Relations Authority